

Journal of Proceedings
Missoula City Council Meeting

October 26, 2020, 6:00 pm

ZOOM Webinar

Members Present: Stacie Anderson, Mirtha Becerra, John P. Contos, Heather Harp, Jordan Hess, Gwen Jones, Julie Merritt, Jesse Ramos, Amber Sherrill, Sandra Vasecka, Heidi West

Members Absent: Bryan von Lossberg

Administration Present: Mayor John Engen, Dale Bickell, Chief Administrative Officer, Ginny Merriam, Communications Director, Jim Nugent, City Attorney, Marty Rehbein

1. CALL TO ORDER AND ROLL CALL

The virtual meeting of the Missoula City Council was called to order by Mayor John Engen at 6:00 PM.

2. APPROVAL OF THE MINUTES

2.1 Minutes from the October 19, 2020 meeting will be available at a later date.

3. SCHEDULE OF COMMITTEE MEETINGS

3.1 Committee meetings for the week of October 26, 2020

Public Safety and Health, October 28, 10:45 – 11:00 a.m.

Parks & Conservation Committee, October 28, 11:15 a.m. – 12:00 p.m.

Administration and Finance Committee, October 28, 12:15 – 12:30 p.m.

4. PUBLIC COMMENT - None

5. CONSENT AGENDA

AYES: (11): Alderperson Anderson, Alderperson Becerra, Alderperson Contos, Alderperson Harp, Alderperson Hess, Alderperson Jones, Alderperson Merritt, Alderperson Ramos, Alderperson Sherrill, Alderperson Vasecka, and Alderperson West

ABSENT: (1): Alderperson von Lossberg

Vote result: Approved (11 to 0)

5.2 Professional Services Agreement Amend. No 4 with Anderson-Montgomery Consulting Engineers, Inc. for the Biosolids & Green Waste Composting Project

Approve and authorize the Mayor to sign Professional Services Agreement Amendment No. 4 with Anderson-Montgomery Consulting Engineers, Inc. for the biosolids and green waste composting project at a cost not to exceed \$34,752.00.

Vote result: Approved

5.3 Transfer of Knife River Ponds Open Space Property from JTL Group/Knife River to City of Missoula

Approve and authorize the Mayor to execute a Grant Deed of Conveyance accepting the transfer of the “Knife River Ponds” open space property from JTL Group/Knife River as agreed upon in the Fort Missoula Regional Park Partnership Agreement dated November 29, 2002.

Vote result: Approved

5.4 Schmidt Road- Milwaukee Trail to Mullan Road Connector Public Trail Easement Open Space Acquisition

Set a public hearing on November 9, 2020 on a resolution to expend up to \$25,000 of the City’s portion of the 2006 Open Space Bond funds to purchase a perpetual public trail easement that will provide a critical connection between the Milwaukee Trail corridor and Mullan Road and Mullan Trail.

ABSENT: (1): Alderperson Becerra

Vote result: Approved

5.5 Construction Agreement with Grant Creek Excavating for the 2020-2021 Storm Water Repair and Maintenance Projects

Approve and authorize the Mayor to sign a Construction Agreement with Grant Creek Excavating for the 2020-2021 Storm Water Repair and Maintenance Projects at a cost not to exceed \$54,357.00.

Vote result: Approved

5.6 Trinity Affordable Housing Development Bond Resolution

Set a public hearing on November 23, 2020 on a resolution relating to a project on behalf of Blueline Development, and the issuance of revenue bonds or notes to finance all or a portion of the costs of construction of a multifamily rental housing project commonly known as Trinity Apartments and

associated costs under Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended; granting preliminary approval thereto.

Vote result: Approved

5.7 Resolution to authorize lease and approval of lease contract for 301 E Main

Adopt a resolution of the Missoula City Council to authorize lease of the real property located in the City of Missoula at 301 East Main Street.

ABSENT: (1): Alderperson von Lossberg

Vote result: Approved

Approve and authorize the Mayor to sign a commercial lease agreement with Sovereign Hope Church for City property located at 301 East Main Street, Missoula, Montana in the amount of \$3,000 per month with first and last months' rent and a deposit in the amount of \$3,000 due at occupancy.

ABSENT: (1): Alderperson von Lossberg

Vote result: Approved

5.8 Resolution to authorize lease and approval of lease contract for 1835 North Ave

Adopt resolution of the Missoula City Council to authorize lease of the real property located in the City of Missoula at 1835 North Avenue.

ABSENT: (1): Alderperson von Lossberg

Vote result: Approved

Approve and authorize the Mayor to sign a commercial lease agreement with Hope Rescue Mission for City property located at 1835 North Avenue in the amount of \$2,000 per month with first and last months' rent and a deposit in the amount of \$2,000 due at occupancy.

Vote result: Approved

5.9 Contract for Relationship Violence Services

Approve and authorize the Mayor to sign a contract with Relationship Violence Services in the amount of \$176,013.

Vote result: Approved

5.10 Emergency Winter Shelter Contract and Update

Approve and authorize the Mayor to sign a contract for services with the Poverello Center for \$100,000 for the provision of Emergency Winter Shelter Services.

Vote result: Approved

5.1 Claims - October 27, 2020

Approve claims in the amount of \$923,611.75 for checks dated October 27, 2020.

AYES: (8): Alderperson Anderson, Alderperson Becerra, Alderperson Harp, Alderperson Hess, Alderperson Jones, Alderperson Merritt, Alderperson Sherrill, and Alderperson West

NAYS: (3): Alderperson Contos, Alderperson Ramos, and Alderperson Vasecka

ABSENT: (1): Alderperson von Lossberg

Vote result: Approved (8 to 3)

Mayor Engen said, thank you, Ms. Rehbein. I have Mr. Ramos.

Alderperson Ramos said, thank you, Mr. Mayor. Can you please divide the question so we can vote item 5.1 separately due to the \$2,500 going to Boone?

Mayor Engen said, yes, sir.

Alderperson Ramos said, thank you.

Mayor Engen said, Ms. Jones?

Alderperson Jones said, yes, I would like to propose that we take the SHEC lease and put that on committee report. I had an email from Dale that we actually needed to modify that. There was a...some communications that had happened so, I'm sorry, I don't have the number of what number it is on the consent agenda because I've got a different screen up but ...

Mayor Engen said, that's alright. So, without objection, we can just have Mr. Bickell clarify now and consider all as part of the consent agenda.

Alderperson Jones said, thank you.

Dale Bickell, Chief Administrative Officer, said, in our...in working with CHEC for the proper...for the lease of the property at the former Public Library site, we didn't close a communication loop properly. They were hoping for a slightly lower rate. We worked with our property manager to come up with a rate of \$3,000 per month, it still meets a fair market value for the property that they are leasing which is...which we've calculated at \$16 a square foot for the office space and \$8 a square foot for storage and now the

larger open space areas and is only used in that area on Sundays. So, we respectfully propose that that rate be changed to \$3,000 per month.

Mayor Engen said, thank you, Mr. Bickell. So, that's item 5.7 will change the monthly lease from \$2,500 per month to \$3,000. Without objection, that can be amended. Seeing none, Ms. Jones?

Alderperson Jones said, I just wanted to thank Dale for bringing this our attention and say that I am in support of it. The SHEC lease is...it's a nonprofit. I don't think...I think it's totally reasonable to have a lower amount. And knowing the history of where they previously had their church services and that that now is a property that the City owns and is using for other purposes, I think they worked with us and it's incumbent on us to work with them so I think this is fine to make it work for everyone.

Mayor Engen said, thank you, Ms. Jones. Any further questions or comments from Councilmembers? I see no hands up in attendees' window so we'll have a roll call vote on item 5.1.

City Clerk Rehbein said, okay, that's a vote on the claims.

Upon a roll call vote the motion passed with 8 Ayes, 3 Nays, 1 Absent

Mayor Engen said, and the motion is approved. Now items 5.2 through 5.10 please.

City Clerk Rehbein said, alrighty. On the balance of the consent agenda, noting the amendment to 5.7.

Upon a roll call vote the motion passed with 11 Ayes, 1 Absent

Mayor Engen said, and the consent agenda is approved.

6. COMMENTS FROM CITY STAFF, AGENCIES, BOARDS, COMMISSIONS, AUTHORITIES AND THE COMMUNITY FORUM - None

7. SPECIAL PRESENTATIONS – None

Mayor Engen said, we have one public hearing and state law and our own Council Rules set guidelines for inviting comment in a formal way on a variety of issues. Upon the staff report on each of these, Council and I will invite community comment. During COVID-19 we are holding these public hearings open for a week and then voting the following week unless there's a requirement for final action on the night of the public hearing. This evening that is not the case so this evening's public hearing will remain open and Council will consider this most likely at its next meeting to take final action. With that, our staff report on an ordinance prohibiting trapping on City parks, trails and conservation lands comes from Ms. Aaberg this evening.

8. PUBLIC HEARINGS

8.1 Ordinance prohibiting trapping on City parks, trails and conservation lands

The Missoula City Council will hold this public hearing open and will take it up under Final Consideration at the next regular City Council meeting on November 2, 2020.

Susan Aaberg said, hello, good evening, Mayor and good evening City Council. Yes, this is an ordinance proposed to amend Title 12 of the Missoula Municipal Code. It will create a section, a new section, Subsection 12.40.035(E) titled "Trapping on City Parks, Trails and Conservation Lands" and amending Section 12.40.080 to allow for restitution for injury or death of a pet and authorizing Missoula Parks and Recreation Department to spring, release or confiscate animal traps or snares found within City parks, trails or conservation lands. There were three specific areas we looked at changing or amending in this ordinance. First, we thought it was appropriate to separate trapping from the hunting provision just so that it was more clear that trapping is prohibited. We, also, included the body-gripping traps and snares in what is prohibited. And we finally, we also gave the judge or court more discretion in what somebody could be sentenced to at the end, including restitution if they injured or killed a pet with an illegally placed trap. And then authorizing the Missoula Parks and Recreation Department to spring release or take traps that are found illegally within City parks, trails or conservation lands.

Mayor Engen said, thank you, Ms. Aaberg. So, some slight modifications to existing ordinance and I will open the public hearing. If you'd like to comment, please raise your hand using those two methods and if you would also please be mindful to try to keep your comments around three minutes. And Steph 000.

Stephen Capra said, good evening. Can you hear me, Councilmembers?

Mayor Engen said, we can.

Stephen Capra said, this is Stephen Capra with Footloose Montana. And I just want to thank you for the thoughtful deliberation you've had on this issue. I think all of you have looked at this and realize this is a serious safety threat for the community. Especially I want to thank Julie Merritt for her efforts on this. And I think all of us understand that we need to keep our community safe and we're a community of recreation and people like to get outdoors. And what we have to do is ensure public safety. And so, I just want to say thank you. All of you have looked at this issue, you've voted on it a few times and I think everybody understands this pretty clearly. And on behalf of the 187,000 people that voted to end trap...

Mayor Engen said, we lost you. Stephen, I'm sorry, we lost you. The public hearing will remain open. Let's try again here. Stephen, do you have me now? Nope. Alright, well seeing no additional public comment, this hearing will remain open until Council takes the final action. Any questions or comments from Councilmembers? Alright, seeing none, we have no additional public hearings. We do have one item for final consideration. These are items that have had public hearings and that hearing has been held open until this evening and we'll close the public hearing on a proposal to regulate tobacco sales

and prohibit the sale of flavored tobacco products. And for folks in attendance this evening, I've had a number of conversations with Councilmembers and my understanding is that Council is considering much amended language and that language is in draft right now so the intention is to return this item to committee where we'll all be on Wednesday in committee and the public can learn more about these amendments and have some discussion around those. So, I would suggest that the only item for public comment this evening is whether to return the item to committee. So, if you're an attendee and you're interested in commenting on the merits of the proposed ordinance, you won't be doing that tonight. You'll have that opportunity on Wednesday and then again at final consideration most likely next week. With that, Ms. Anderson?

9. FINAL CONSIDERATION

9.1 Proposal to regulate tobacco sales and prohibit the sale of flavored tobacco products

Missoula City Council member Stacie Anderson requested that this item be returned to the Public Safety and Health committee on November 4, 2020 during which time a revised draft of the ordinance will be considered.

Aldersperson Anderson said, thank you, Mr. Mayor. Actually, I wanted to make a couple of corrections. So, we are sending this back to committee and we'll be hearing it on Wednesday, November 4th in the afternoon. Time on that to be determined so that is their intention to give the sponsors a little bit more time for drafting which...and then with final consideration on Monday, November 9th.

Mayor Engen said, thank you for the clarification.

Aldersperson Anderson said, thank you.

Mayor Engen said, alright, so this item has been returned to committee and again will be heard in that committee in early November with final action to take place the following week. Anyone want to comment on the return to committee even though there's no vote? Mr. Alan you need to unmute it if you're talking.

Earl Allen said, there we go. How's that?

Mayor Engen said, that's much better.

Earl Allen said, thank you. I just wanted to express my thanks to the Council for sending this back to committee. I think that's a helpful move to several of us who think there were some misconceptions out there and I appreciate the fact that the Public Health and Safety Committee took a little time and will continue to take a little more time going forward to discuss these things. Hopefully, I can make sure I'm part of that conversation going forward. I, also, wanted to happily announce that two more of my Noon's crew members passed compliance checks over this last weekend, another new employee and

another long-term employee. So, I just want to reiterate that we do take this all very seriously. We are on the frontlines and we...those of us in the retail community sure will want to make sure that we're part of that conversation going forward. And I also want to express appreciation to Councilors who took the time to come and visit our stores. I know Councilor Harp came to visit one of our stores and I had a very good conversation with her. And I think that in the meantime, between now and the 4th, I'd love to see Councilors come and visit us and see what we've got going on. That's all. Thank you very much.

Mayor Engen said, thank you, Mr. Allen. And that was our only final consideration item this evening. I see no additional...oh, I see one more hand up. Caller 4665.

Tom Bryant said, yes, Mayor and City Councilmembers. This is Tom Bryant. Are you able to hear me?

Mayor Engen said, we are.

Tom Bryant said, if you recall, I'm the Executive Director and Legal Counsel for the National Association of Tobacco Outlets and we have a number of stores in Missoula. It's my understanding that you're going to send this back to committee. I just want to reiterate that the Montana Legislature when it passed the Montana Youth Access to Tobacco Control Act, was very clear in preempting any more restrictive ordinance. So, if the new language that's being drafted would consider any kind of ban on any kind of flavored tobacco product, flavored alternative nicotine product or flavored electronic smoking product then that ban would be preempted and would not be appropriate for the City Council to consider. So, I just want to reiterate that concern that we have that that advice does follow the City Attorney's legal memorandum that he issued to the City Council in February of this year. That would be the totality of my comments for this evening. Thank you.

Mayor Engen said, thank you, sir. Seeing no more hands up, we will move on, folks, to communication from the Mayor. I will pass this evening.

10. COMMUNICATIONS FROM THE MAYOR - None

11. GENERAL COMMENTS OF CITY COUNCIL

Aldersperson Merritt encouraged people to turn in their ballot.

Aldersperson Becerra brought attention to her home country of Chile. The country voted yesterday to rewrite its Constitution to no longer live under a Constitution that was created during the brutal dictatorship and so this little skinny country of hers that sits at the edge of the world made history by holding type 2 rallies of equality and democracy. Change is coming and that is a message to everyone, that voting is important.

Aldersperson Anderson made a plea to Missoulians and folks in the surrounding counties that we really need to be doing better on our COVID measures. We've had 62 deaths in Montana in the last 72 days.

There are 62 additional families who are going to be missing a loved one as we go into this holiday season. In Missoula, we've had 153 new COVID cases since last Friday. What we are doing as a community is not working. We need to do more. Stay home if you can. If you must go out, stay socially distanced. Wear your masks which means over your nose and take all the precautions needed. It's cold and we're going to start being indoors more and cases are going to be on the rise. We're all sick and tired of this but it does mean the difference between life or death for people in our community. Too many people have suffered, too many families have lost loved ones and please continue to be vigilant so that no more families have to have the heartbreak of missing somebody this holiday season.

Alderperson Jones said Larry Riley passed away on Saturday. She's known Larry since she was a little girl. He was a huge impact on this community. He grew up in Roundup, Montana. He played basketball for the Griz. He went to the law school at the U of M. He practiced law for quite a few decades at Garlington, Lohn and Robinson. Her father and Larry were in practice there as partners so that's how she got to know him. Larry was always a bit of a rebel. It was a pretty conservative law firm but she always remembers the professional photos taken of all the attorneys so there's 30 pictures of attorneys up on the wall and they all have their gray and navy-blue suits and Larry had on a bright red blazer and that kind of sums up Larry Riley. He had a great sense of humor. He was a wonderful trial attorney because he was a wonderful story teller. The most heartfelt eulogy she's ever heard was when Larry Riley spoke at the eulogy of his wife, Diana's funeral about four years ago and the entire UC Ballroom was in tears because it was so heartfelt. For the last four years Larry was on the Board of Missoula Aging Services after he retired from his law practice. He gave a huge amount of time to Missoula Aging Services in terms of free legal advice for elder law and helped many people there and this last year he was the chair of the board. Missoula lost a huge person who gave so much to this community. There will not be a funeral because we're in the middle of a pandemic but she wanted to give a shout-out to Larry Riley.

Alderperson Harp said she had a Zoom coffee meeting this morning with Mae Nan Ellington. Years ago, she served as our City Attorney and then she went into private practice and did a lot of good work there. She was the youngest woman in 1972 as part of our Montana Constitution. She had a meeting because of Ms. Harp's vote on the Expo Parkway Project. Councilors never really get to tell more about why they come to the decisions that they do when it comes down to the land use standard issues. Ms. Ellington was worried that Ms. Harp had disregarded the Grant Creek neighborhood and maybe had overstepped her and said something wrong. Ultimately, these are hard decisions that the Council makes. Ms. Harp tries to look at the divisions that she ends up defining based upon the facts that are presented to the

Council. They never will see eye-to-eye but what Council has is mutual respect for one another. In this case, Mae Nan and Ms. Harp have a long history of mutual respect. Her point is that there are times where they will disagree on certain matters but by and large they have far, far more in common. Everyone of the Council strives to make Missoula a better, stronger community that progresses forward and lifts people up out of poverty, protects the climate as best that they can and puts roofs over heads. Let's keep trying to find common ground.

Aldersperson Sherrill thanked Ms. Jones for the lovely tribute to Larry. His granddaughter is very good friends with both of her daughters and has been really hurting this week missing her grandfather dearly so Ms. Sherrill will make sure that they take a look at the City Council meeting and hear Gwen's comments. She echoed some of the thoughts Ms. Anderson made. Our COVID numbers are not good. New restrictions are going to be announced tomorrow at a press conference. We've had major outbreaks at our senior living facilities with over 80 cases in one of them. Our positivity rate of last week was 8.3. Boston closed their public schools when they went over 5% and our hospitals capacity is starting to see some limitations. Currently there are four hospitals in Montana that are at capacity. This is not only a risk as more COVID patients arrive in our hospitals but also for anyone that slips on the ice, gets in a car accident, is a victim of domestic violence or has a heart attack. Capacity means capacity regardless of your emergency. We all need to think about that as a community. We can all agree that we want our hospitals functioning and admitting patients. We want our businesses to survive and we want our children to get educated. So, every time we choose to have a group of friends over, go to a dinner party, host an event or not wear a mask, we are reducing the chances of these things happening. She is a very social person and she misses what her life used to look like. She misses her kitchen being filled with teenagers eating all of their food. She misses her elderly parents and she misses her girlfriends. She's asking people to not give up fighting for this, to read the science and think about what it means for our community if our cases continue to spike. To remember that just because you may not die from it, you may still be dealing with damage to your health for a long time to come and we're just beginning to understand this. Limit social interactions and size of gatherings, to social distance, to wash your hands to please wear a mask. We can make a difference and we can save some lives.

Aldersperson Vasecka said don't forget to vote. She recommended people to drop off their ballots instead of mailing them in. Also, there was a horrible tragedy on I-90 near Billings. Two tow truck operators were struck and killed by a vehicle trying to pass while they were recovering another vehicle due to this icy weather. Two young men, 27 and 28, could still be here today and they're not because

somebody was trying to get someplace faster. It's winter and icy out so please everybody drive slow and be aware of your surroundings. Leave early or be late.

12. COMMITTEE REPORTS

12.1 Administration and Finance committee (AF) report

12.1.1 October 21, 2020 Administration and Finance report

12.2 Budget Committee of the Whole (BCOW) committee report

12.3 Committee of the Whole (COW) committee report

12.3.1 October 21, 2020 Committee of the Whole report

12.4 Land Use and Planning Appointments (LUPA) Subcommittee report

12.5 Land Use and Planning (LUP) committee report

12.5.1 October 21, 2020 Land Use and Planning report

12.6 Parks and Conservation (PC) committee report

12.6.1 October 21, 2020 Parks and Conservation report

12.7 Public Safety and Health (PSH) committee report

12.7.1 October 21, 2020 Public Safety and Health report

12.8 Public Works (PW) committee report

12.8.1 October 21, 2020 Public Works report

13. NEW BUSINESS - None

14. ITEMS TO BE REFERRED

14.1 Administration and Finance committee referrals

14.1.1 Reappointments to the Impact Fee Advisory Committee

14.2 Budget Committee of the Whole referrals

14.3 Committee of the Whole referrals

14.4 Land Use and Planning Appointments Subcommittee referrals

14.5 Land Use and Planning committee referrals

14.5.1 Appointment to the Missoula Consolidated Planning Board

14.6 Parks and Conservation committee referrals

14.6.1 Dean Stone Corridor Open Space Acquisition

14.7 Public Safety and Health committee referrals

14.7.1 Purchase of one Type 1 Engine and 1 Type 6 Wildland Engine

14.8 Public Works committee referrals

15. MISCELLANEOUS COMMUNICATIONS, PETITIONS, REPORTS AND ANNOUNCEMENTS

15.1 Administratively approved agreement report

16. ADJOURNMENT

The meeting adjourned at 6:36 p.m.